

Massachusetts Rules of Domestic Relations Procedure

Including amendments effective December 1, 2009

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- The Rules, Lawyers Weekly Publications, loose-leaf.

I. Scope of Rules--One Form of Action

[Rule 1](#) [Scope of Rules](#)

[Rule 2](#) One Form of Action

II. Commencement of Action; Service of Process, Pleadings, Motions and Orders

[Rule 3](#) Commencement of Action

[Rule 4](#) Process

[Rule 4.1](#) Attachment

[Rule 4.2](#) Trustee Process

[Rule 4.3](#) Arrest; Supplementary Process; Ne Exeat

[Rule 5](#) Service and Filing of Pleadings and Other Papers

[Rule 6](#) Time

III. Pleadings and Motions

[Rule 7](#) Pleadings Allowed: Form of Motions

[Rule 8](#) General Rules of Pleading

[Rule 9](#) Pleading Special Matters

[Rule 10](#) Form of Pleadings

[Rule 11](#) Appearances and Pleadings

[Rule 12](#) Defenses and Objections--When and How Presented--By Pleading or Motion

[Rule 13](#) Counterclaim and Cross-Complaint

Rule 14 (Deleted)

[Rule 15](#) Amended and Supplemental Pleadings

[Rule 16](#) Pre-Trial Procedure: Formulating Issues

IV. Parties

[Rule 17](#) Parties Plaintiff and Defendant: Capacity including corrective amendment effective Dec. 1, 2009

Rule 18 (Deleted)

[Rule 19](#) Joinder of Persons Needed for Just Adjudication

Rules 20-23.2 (Deleted)

[Rule 24](#) Intervention

[Rule 25](#) Substitution of Parties

V. Depositions and Discovery

[Rule 26](#) General Provision Governing Discovery

[Rule 27](#) Depositions Before Action or Pending Appeal

[Rule 28](#) Persons Before Whom Depositions May Be Taken

[Rule 29](#) Stipulations Regarding Discovery Procedure

[Rule 30](#) Depositions Upon Oral Examination

[Rule 30A](#) Audiovisual Depositions

[Rule 31](#) Depositions of Witnesses Upon Written Questions

[Rule 32](#) Use of Depositions in Court Proceedings

- [Rule 33](#) Interrogatories to Parties
- [Rule 34](#) Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes
- [Rule 35](#) Physical and Mental Examination of Persons
- [Rule 36](#) Requests for Admission
- [Rule 37](#) Failure to Make Discovery: Sanctions

VI. Trials

- Rule 38 (Deleted)
- [Rule 39](#) Trial by Jury or by the Court
- [Rule 40](#) Assignment of Cases for Trial: Continuances
- [Rule 41](#) Dismissal of Actions
- [Rule 42](#) Consolidation: Separate Trials
- [Rule 43](#) Evidence
- [Rule 44](#) Proof of Official Records
- [Rule 44.1](#) Determination of Foreign Law
- [Rule 45](#) Subpoena
- [Rule 46](#) Exceptions Unnecessary
- Rules 47-50 (Deleted)
- [Rule 51](#) Argument
- [Rule 52](#) Findings by the Court
- [Rule 53](#) Masters

VII. Judgment

- [Rule 54](#) Judgments: Costs
- Rule 55 (Deleted)
- [Rule 56](#) Summary Judgment
- [Rule 57](#) Declaratory Judgment
- [Rule 58](#) Entry of Judgment
- [Rule 59](#) New Trials: Amendment of Judgments
- [Rule 60](#) Relief from Judgment or Order
- [Rule 61](#) Harmless Error
- [Rule 62](#) Stay of Proceedings to Enforce a Judgment
- [Rule 63](#) Disability of a Judge

VIII. Provisional and Final Remedies and Special Procedures

- [Rule 64](#) Report of Case
- [Rule 65](#) Injunctions
- [Rule 65.1](#) Security: Proceedings Against Sureties
- Rule 66 (Deleted)
- [Rule 67](#) Deposit in Court
- Rule 68 (Deleted)
- [Rule 69](#) Execution
- [Rule 70](#) Judgment for Specific Acts: Vesting Title

Rule 71 (Deleted)
[Rules 72-76 RESERVED]

IX. Courts and Clerks

Rule 77 Courts and Clerks

Rule 78 Motion Day

Rule 79 Books and Records Kept by the Clerk and Entries Therein

Rule 80 Stenographic Report or Transcript

X. General Provisions

Rule 81 Applicability of Rules

Rule 82 Jurisdiction and Venue Unaffected

Rule 83 Supplemental Rules

Rule 84 Forms

Rule 85 Title

Rule 1: Scope of Rules

These rules govern the procedure in the Probate and Family Court Department in all proceedings for divorce, separate support, and custody of minor children, annulment or affirmation of marriage, an action for spousal and/or child support, an action to determine paternity and/or support for a child born out of wedlock, modification thereof, contempt and abuse prevention as enumerated in General Laws, Chapters 207, 208, 209, 209A, 209C, 215 and 209D. They shall be construed to secure the just, speedy and inexpensive determination of every action they govern.

Rule 2: One Form of Action

There shall be one form of action to be known as "civil action". (Identical to Mass. R. Civ. P. 2).

Rule 3: Commencement of Action

A civil action is commenced by (1) mailing to the clerk of the proper court by certified or registered mail a complaint and an entry fee prescribed by law, or (2) filing such complaint and an entry fee with such clerk. Actions brought pursuant to G.L. c. 185 for registration or confirmation shall be commenced by filing a surveyor's plan and complaint on a form furnished by the Land Court. (Identical to Mass.R.Civ.P. Rule 3).

Rule 4: Process

(a) Summons: Issuance. Upon commencing the action the plaintiff or his attorney shall deliver a copy of the complaint and a summons for service to the sheriff, deputy sheriff, or special sheriff; any other person duly authorized by law; a person specifically appointed to serve them; or as otherwise provided in subdivision (c) of this rule. Upon request of the plaintiff separate or additional summons shall issue against any defendant. The summons may be procured in blank from the clerk, and shall be filled in by the plaintiff or the plaintiff's attorney in accordance with Rule 4(b). Identical to [Mass.R.Civ.P. Rule 4\(a\)](#).

(b) Same: Form. The summons shall bear the signature or facsimile signature of the clerk; be under the seal of the court; be in the name of the Commonwealth of Massachusetts; bear teste of the first justice of the court to which it shall be returnable who is not a party; contain the name of the court and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend; and shall notify him that in case of his failure to do so judgment by default may be rendered against him for the relief demanded in the complaint. Identical to [Mass.R.Civ.P. Rule 4\(b\)](#).

(c) By Whom Served. Except as otherwise permitted by paragraph (h) of this rule, service of all process shall be made by a sheriff, by his deputy, or by a special sheriff; by any other disinterested person; by any other person duly authorized by law; by some person specially appointed by the court for that purpose; or in the case of service of process outside the Commonwealth, by an individual permitted to make service of process under the law of this Commonwealth or under the law of the place in which the service is to be made, or who is designated by a court of this Commonwealth. A subpoena may be served as provided in [Rule 45](#). Notwithstanding the provisions of this paragraph (c), wherever in these rules service is permitted to be made by certified or registered mail, the mailing may be accomplished by the party or his attorney.

(d) Summons: Personal Service Within the Commonwealth. The summons and a copy of the complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) The defendant, whether within or without the Commonwealth, may accept personal service by written endorsement of his duly notarized acceptance of service on the summons or other process. In the event that service is not so accepted, service shall be made as set forth hereafter:

(2) Upon an individual by delivering a copy of the summons and of the complaint to him personally.

In complaints seeking establishment of paternity or for support of a child born out of wedlock, complaints for support of a spouse or child under [Chapter 209, § 32F](#), for actions under [Chapter 209D](#), for contempt and complaints for modification only, upon an individual:

(i) by delivering a copy of the summons and complaint to him personally, or

(ii) by leaving a copy of the summons and complaint at his last and usual place of abode and by mailing copies thereof to the defendant. Notice under this subsection shall be proved by affidavit containing a particular statement thereof.

(3) If the person authorized to serve process makes return that after diligent search he cannot find the defendant, or if it appears that a defendant resides outside of the Commonwealth or is of parts unknown, the court may on application of the plaintiff issue an order of notice in the manner and form prescribed by law.

(4) If personal service shall not be made as aforesaid, such notice in the form ordered by the court shall be served by publishing a copy of the said notice once in some newspaper designated by the Register or the court and by mailing a copy of such notice by registered or certified mail, if practicable, to the defendant at his last known address. The defendant shall file his answer or other responsive pleading within the time periods allowed under these rules computed as if the date of publication were the date on which personal service was made.

(5) Service of publication and mailing shall be proved by affidavit containing a particular statement thereof, accompanied by a copy of the advertisement (or tear sheet) of the newspaper containing the publication and, if practicable, by the return receipt showing receipt of a copy sent by registered or certified mail.

(6) The court shall require proof of actual notice when practicable. If such notice is not shown to have been received by the defendant, the complaint shall not be assigned for hearing until the expiration of three months after the publication date, date of service at a last and usual place of abode, or date of a mailing to the last known address of the defendant if such service has been ordered by the court. Nothing in this rule shall prevent hearing of a motion for temporary orders or issuance of temporary orders prior to the expiration of three months, provided notice of the motion and hearing has been mailed to the defendant's last and usual place of abode in accordance with **Rules 5 and 6**.

(e) Same. Personal Service Outside the Commonwealth. When any statute or law of the Commonwealth authorizes service of process outside the Commonwealth, the service shall be made by delivering a copy of the summons and of the complaint: (1) in any appropriate manner prescribed in subdivision (d) of this Rule; or (2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction; or (3) by any form of mail addressed to the person to be served and requiring a signed receipt; or (4) as directed by the appropriate foreign authority in response to a letter rogatory; or (5) as directed by order of the court. Identical to **Mass.R.Civ.P.Rule 4(e)**.

(f) Return. The person serving the process shall make proof of service thereof in writing to the court promptly and in any event within the time during which the person served must respond to the process. The person making return of service shall state in his return of service that a copy of the summons and complaint was delivered by him in hand to the defendant and shall further state the date on which and the place where such service was made. If service is made by a person other than a sheriff, deputy sheriff, or special sheriff, he shall make affidavit thereof. Proof of service outside the Commonwealth may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the Commonwealth, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or such other evidence of personal delivery to the addressee as may be satisfactory to the court. Failure to make proof of service does not affect the validity of the service.

(g) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued. Identical to **Mass.R.Civ.P. 4(g)**.

(h) Certain Actions in Probate Courts: Service. Notwithstanding any other provision of these rules, in actions in the Probate Courts in the nature of petitions for instructions or for the allowance of accounts, service may be made in accordance with **G.L. c. 215, § 46**, in such manner and form as the court may order. Identical to **Mass.R.Civ.P. 4(h)**.

(i) Deleted.

(j) Summons: Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 90 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. Identical to **Mass.R.Civ.P. 4(j)**.

As amended April 1, 2009 effective May 1, 2009.

Reporter's Notes (2009). Rule 4(d)(4) was amended to reduce the number of times notice must be published. This change is consistent with the probate rule requirement and will be more cost effective for litigants.

Rule 4.1: Attachment

(a) Availability of Attachment. Subsequent to the commencement of any action under these rules, real estate, goods and chattels and other property may, in the manner and to the extent provided by law, but subject to the requirements of this rule, be attached and held to satisfy the judgment for damages and costs which the plaintiff may recover. Identical to [Mass.R.Civ.P 4.1\(a\)](#)

(b) Writ of Attachment: Form. The writ of attachment shall bear the signature or facsimile signature of the clerk, be under the seal of the court, be in the name of the Commonwealth, contain the name of the court, the names and residences (if known) of the parties and the date of the complaint, bear teste of the first justice of the court to which it is returnable who is not a party; state the name and address of the plaintiff's attorney (if any), be directed to the sheriffs of the several counties or their deputies, or any other person duly authorized by law, and command them to attach the real estate or personal property of the defendant to the value of an amount approved by the court, and to make due return of the writ with their doings thereon. The writ of attachment shall also state the name of the justice who entered the order approving attachment of property and the date thereof. Identical to [Mass.R.Civ.P 4.1\(b\)](#)

(c) Same: Service. The writ of attachment may be procured in blank from the clerk and shall be filled out by the plaintiff or plaintiff's attorney as provided in subdivision (b) of this rule, either of whom shall deliver to the officer making the attachment the original writ of attachment upon which to make his return and a copy thereof.

No property may be attached unless such attachment for a specified amount is approved by order of the court. Except as provided in subdivision (f) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance shown by the defendant to be available to satisfy the judgment.

An action in which attachment of property is sought may be commenced only by filing the complaint with the court, together with a motion for approval of the attachment. The motion shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (h) of this rule. Except as provided in subdivision (f) of this rule, the motion and affidavit or affidavits with the notice of hearing thereon shall be served upon the defendant in the manner provided by [Rule 4](#), at the same time the summons and complaint are served upon him.

Inclusion of a copy of the complaint in the notice of hearing shall not constitute personal service of the complaint upon the defendant. The notice shall inform the defendant that by appearing to be heard on the motion for approval of an attachment he will not thereby submit himself to the jurisdiction of the court nor waive service of the complaint and summons upon him in the manner provided by law.

Except as provided in subdivision (e) of this rule, any attachment of property shall be made within 30 days after the order approving the writ of attachment. When attachments of any kind of property are made subsequent to service of the summons and complaint upon the defendant, a copy of the writ of attachment with the officer's endorsement thereon of the date or dates of the attachments shall be promptly served upon the defendant in the manner provided by [Rule 5](#). Identical to [Mass.R.Civ.P 4.1\(c\)](#)

(d) Attachment on Counterclaim, Cross-Claim or Third-Party Complaint. An attachment may be made by a party bringing a counterclaim, a cross-claim, or a third-party complaint in the same manner as upon an original claim. Identical to [Mass.R.Civ.P 4.1\(d\)](#)

(e) Subsequent Attachment. Either before or after expiration of the applicable period prescribed in subdivision (c) of this rule for making attachments, the court may, subject to the provisions of subdivision (f) of this rule, order another or an additional attachment of real estate, goods, and chattels or other property. Identical to [Mass.R.Civ.P 4.1\(e\)](#)

(f) Ex Parte Hearings on Property Attachments. An order approving attachment of property for a specific amount may be entered ex parte upon findings by the court that there is a reasonable likelihood that the plaintiff will recover judgment in an amount equal to or greater than the amount of the attachment over and above any liability insurance known or reasonably believed to be available, and that either (i) the person of the defendant is not subject to the jurisdiction of the court in the action, or (ii) there is a clear danger that the defendant if notified in advance of attachment of the property will convey it, remove it from the state or will conceal it, or (iii) there is immediate danger that the defendant will damage or destroy the property to be attached. The motion for such ex parte order shall be accompanied by a certificate by the plaintiff or his attorney of the amount of any liability insurance which he knows or has reason to believe will be available to satisfy any judgment against the defendant in the action. The motion, in the filing of which the plaintiff's attorney shall be subject to the obligations of [Rule 11](#), shall be supported by affidavit or affidavits meeting the requirements set forth in subdivision (h) of this rule. Identical to [Mass.R.Civ.P 4.1\(f\)](#)

(g) Dissolution or Modification of Ex Parte Attachments. On two days' notice to the plaintiff or on such shorter notice as the court may prescribe, a defendant whose real or personal property has been attached pursuant to an ex parte order entered under subdivision (f) of this rule may appear without thereby submitting his person to the jurisdiction of the court, and move the dissolution or modification of the attachment, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing herein shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of an attachment that is otherwise available by law. Identical to [Mass.R.Civ.P 4.1\(g\)](#)

(h) Requirements for Affidavits. Affidavits required by this rule shall set forth specific facts sufficient to warrant the required findings and shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that he believes this information to be true. Identical to [Mass.R.Civ.P 4.1\(h\)](#)

(i) Form of Hearing. At any hearing held under this rule, either party may adduce testimony and may call witnesses (including any opposing party). The court, for cause shown on the evidence so adduced, may make such interlocutory orders concerning disposition of the property sought to be attached as justice may require. Identical to [Mass.R.Civ.P 4.1\(i\)](#)

Rule 4.2: Trustee Process

(a) Availability of Trustee Process. Subsequent to the commencement of any personal action under these rules, except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander or libel, or for assault and battery, trustee process may be used, in the manner and to the extent provided by law, but subject to the requirements of this rule, to secure satisfaction of the judgment for damages and costs which the plaintiff may recover, provided, however, that no person shall be adjudged trustee for any amount due from him to the defendant for wages or salary for personal labor or services of the defendant except on a claim that has first been reduced to judgment or otherwise authorized by law; and in no event shall the attachment exceed the limitations prescribed by law. Identical to [Mass.R.Civ.P 4.2\(a\)](#)

(b) Summons to Trustee: Form. The summons to a trustee shall bear the signature or facsimile signature of the clerk, be under the seal of the court, be in the name of the Commonwealth, contain the name of the court, the names and residences (if known) of the parties and the date of the filing of the complaint, bear teste of the first justice of the court to which it is returnable who is neither a party nor a trustee; state the name and address of the plaintiff's attorney (if any), be directed to the trustee, shall notify him that the goods, effects or credits of the defendant in the hands of the trustee have been attached to the value of the amount authorized by the court, shall state the time within which these rules require the trustee to answer, shall notify him that in case of his failure to do so he will be defaulted and adjudged trustee as alleged, and, if wages, a pension, or a bank account is sought to be attached, shall notify him of such amount of wages, pension, or bank account as are by law exempt from attachment and shall direct him to pay over to the defendant the exempted amount. The summons to the trustee shall also state the name of the justice who entered the order approving the trustee attachment and the date thereof. Identical to [Mass.R.Civ.P 4.2\(b\)](#)

(c) Same: Service. The trustee summons may be procured in blank from the clerk and shall be filled out by the plaintiff or the plaintiff's attorney as provided in subdivision (b) of this rule, either of whom shall deliver to the person who is to make service the original trustee summons upon which to make his return and a copy thereof.

No trustee summons may be served unless attachment on trustee process for a specified amount has been approved by order of the court. Except as provided in subdivision (g) of this rule, the order of approval may be entered only after notice to the defendant and hearing and upon a finding by the court that there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the trustee process over and above any liability insurance shown by the defendant to be available to satisfy the judgment.

An action in which trustee process is sought may be commenced only by filing the complaint with the court, together with a motion for approval of attachment on trustee process. The motion shall be supported by affidavit or affidavits meeting the requirements set forth in [Rule 4.1\(h\)](#). Except as provided in subdivision (g) of this rule, the motion and affidavit or affidavits with the notice of hearing thereon shall be served upon the defendant in the manner provided by [Rule 4](#), at the same time the summons and complaint are served upon him; and the defendant shall also be served with a copy of the trustee summons in cases where attachment has been approved ex parte as provided in subdivision (g) of this rule. Inclusion of a copy of the complaint in the notice of hearing shall not constitute personal service of the complaint upon the defendant. The notice shall inform the defendant that by appearing to be heard on the motion for approval of an attachment on trustee process he will not thereby submit himself to the jurisdiction of the court nor waive service of the complaint and summons upon him in the manner provided by law.

Except as provided in subdivision (f) of this rule, any trustee process shall be served within 30 days after the date of the order approving the attachment. Promptly after the service of the trustee summons upon the trustee or trustees, a copy of the trustee summons with the officer's endorsement thereon of the date or dates of services shall be served upon the defendant in the manner provided by [Rule 5](#). Identical to [Mass.R.Civ.P 4.2\(c\)](#)

(d) Answer by Trustee; Subsequent Proceedings. A trustee shall file, but need not serve, his answer, under oath, or signed under the penalties of perjury, within 20 days after the service of the trustee summons upon him, unless the court otherwise directs. The answer shall disclose plainly, fully, and particularly what goods, effects or credits, if any, of the defendant were in the hands or possession of the trustee when the trustee summons was served upon him. The proceedings after filing of the trustee's answer shall be as provided by law. Identical to [Mass.R.Civ.P 4.2\(d\)](#)

(e) Trustee Process on Counterclaim, Cross-Claim or Third-Party Complaint. Trustee process may be used by a party bringing a counterclaim, a cross-claim, or a third-party

complaint in the same manner as upon an original claim. Such party may use trustee process, even though the trustee does not reside or maintain a usual place of business in the county where the action is pending. Identical to [Mass.R.Civ.P 4.2\(e\)](#)

(f) Subsequent Trustee Process. Either before or after expiration of the applicable period prescribed in subdivision (c) of this rule for serving trustee process, the court may, subject to the provisions of subdivision (g) of this rule, order another or an additional service of the trustee summons upon the original trustee. Identical to [Mass.R.Civ.P 4.2\(f\)](#)

(g) Ex Parte Hearings on Trustee Process. An order approving trustee process for a specific amount may be entered ex parte upon findings by the court that there is a reasonable likelihood that the plaintiff will recover judgment in an amount equal to or greater than the amount of the trustee process over and above any liability insurance known or reasonably believed to be available, and that either (i) the person of the defendant is not subject to the jurisdiction of the court in the action, or (ii) there is a clear danger that the defendant if notified in advance of the attachment on trustee process will withdraw the goods or credits from the hands and possession of the trustee and remove them from the state or will conceal them, or (iii) there is immediate danger that the defendant will dissipate the credits, or damage or destroy the goods to be attached on trustee process. The motion for an ex parte order shall be accompanied by a certificate by the plaintiff or his attorney of the amount of any liability insurance which he knows or has reason to believe will be available to satisfy any judgment against the defendant in the action. The motion, in the filing of which the plaintiff's attorney shall be subject to the obligations of [Rule 11](#), shall be supported by affidavit or affidavits meeting the requirements set forth in [Rule 4.1\(h\)](#). Identical to [Mass.R.Civ.P 4.2\(g\)](#)

(h) Dissolution or Modification of Ex Parte Trustee Process. On two days' notice to the plaintiff or on such shorter notice as the court may prescribe, a defendant whose goods or credits have been attached on trustee process pursuant to an ex parte order entered under subdivision (g) of this rule may appear, without thereby submitting his person to the jurisdiction of the court, and move the dissolution or modification of the trustee process, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing the plaintiff shall have the burden of justifying any finding in the ex parte order which the defendant has challenged by affidavit. Nothing herein shall be construed to abolish or limit any means for obtaining dissolution, modification or discharge of an attachment that is otherwise available by law. Identical to [Mass.R.Civ.P 4.2\(h\)](#)

(i) Form of Hearing. At any hearing held under this rule, either party may adduce testimony and may call witnesses (including any opposing party). The court, for cause shown on the evidence so adduced, may make such interlocutory orders concerning disposition of the goods or credits sought to be subject to trustee process as justice may require. Identical to [Mass.R.Civ.P 4.2\(i\)](#)

Rule 4.3: Arrest: Supplementary Process: Ne Exeat

(a) Arrest; Availability of Remedy. Except in cases of civil contempt or as specifically authorized by law, no civil arrest shall be permitted in connection with any action under these rules, except as provided in section (c) of this rule. Identical to [Mass.R.Civ.P 4.3\(a\)](#)

(b) Deleted.

(c) Ne Exeat. An order of arrest may be entered upon motion with or without notice when the plaintiff has obtained a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and where the defendant is not a resident of the Commonwealth or is about to depart therefrom, by reason of which nonresidence or departure there is danger that such judgment or order will be rendered ineffectual. The motion shall be accompanied by an affidavit showing that the plaintiff is entitled to the relief requested. The court may fix such terms as are just, and shall in any event afford the defendant an opportunity to obtain his release by the giving of an

appropriate bond. In this rule the words "plaintiff" and "defendant" mean respectively the party who has obtained the judgment or order and the person whose arrest is sought. Identical to [Mass.R.Civ.P 4.3\(c\)](#)

Rule 5: Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these Rules, or unless the court on motion with or without notice or of its own initiative otherwise orders, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery required to be served upon a party, every written motion other than one which may be heard ex parte, and every written notice, notice of change of attorney, appearance, demand, brief or memorandum of law, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on any party in default for failure to appear except that any pleading asserting new or additional claims for relief against him shall be served upon him in the manner provided for service of summons in [Rule 4](#). Identical to [Mass.R.Civ.P. 5\(a\)](#)

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the register of probate. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. If notice of a hearing is given by service in hand delivered after 4 p.m., an additional day shall be added for purposes of computation of time under [Rule 6\(c\)](#). The time when the in hand service was made shall be reflected on the Certificate of Service.

(c) Same: Multiple Defendants. The court, on motion with or without notice or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs. Identical to [Mass.R.Civ.P. 5\(c\)](#)

(d) Filing Generally, and Nonfiling of Discovery Materials.

(1) Except as otherwise provided in Rule 5(d)(2), all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party's attorney shall constitute a representation by him, subject to the obligations of [Rule 11](#), that a copy of the paper has been or will be served upon each of the other parties as required by Rule 5(a). No further proof of service is required unless an adverse party raises a question of notice. In such event, prima facie proof of service shall be made out by a statement signed by the person making service, or by a written acknowledgment signed by the party or attorney served; and such statement or acknowledgment shall be filed within a reasonable time after notice has been questioned. Failure to make proof of service does not affect the validity of service.

(2) Unless the court, generally or in a specific case, on motion ex parte by any party or concerned citizen, or on its own motion shall otherwise order, the following shall not be presented or accepted for filing: notices of taking depositions, transcripts of depositions, interrogatories under [Rule 33](#), answers and objections to interrogatories under [Rule 33](#), requests under [Rule 34](#), and responses to requests under [Rule 34](#). The party taking a deposition or obtaining material through discovery is responsible for its preservation and

delivery to court if needed or so ordered. Notwithstanding anything in this Rule 5(d)(2), any party pressing or opposing any motion or other application for relief may file any document pertinent thereto. Identical to [Mass.R.Civ.P. 5\(d\)](#)

(e) Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that a judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk. Identical to [Mass.R.Civ.P. 5\(e\)](#)

(f) Effect of Failure to File. If any party fails within five days after service to file any paper required by this rule to be filed, the court on its own motion or the motion of any party may order the paper to be filed forthwith; if the order be not obeyed, it may order the paper to be regarded as stricken and its service to be of no effect. Identical to [Mass.R.Civ.P. 5\(f\)](#)

(g) Information Required. On any pleading or other paper required or permitted by these rules to be filed with the court, there shall appear the name of the court and the county, the title of the action, the docket number, the designation of the nature of the pleading or paper, and the name and address of the person or attorney filing it. In any case where an endorsement for costs is required, the name of any attorney of this Commonwealth appearing on the complaint filed with the court shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose. Identical to [Mass.R.Civ.P. 5\(g\)](#)

Rule 6: Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute or rule, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in [Rule 77\(c\)](#), "legal holiday" includes those days specified in [Mass. G.L. c. 4, § 7](#) and any other day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth. Identical to [Mass.R.Civ.P. 6\(a\)](#)

(b) Enlargement. When by these rules or by a notice given thereunder or by order or rule of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; or (3) permit the act to be done by stipulation of the parties; but it may not extend the time for taking any action under Rules 50(b), [52\(b\)](#), [59\(b\)](#), (d), and (e), and [60\(b\)](#), except to the extent and under the conditions stated in them. Identical to [Mass.R.Civ.P. 6\(b\)](#)

(c) For Motions-Affidavits-Proposed Orders. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than seven (7) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may be made on ex parte application when an emergency justifies the same. An application for ex parte relief from the seven (7) day notice requirement shall be by motion and supported by affidavit setting forth the nature of the emergency. On allowance of the motion, the court shall make a written finding that the emergency exists and setting forth the nature of the emergency. Whenever a motion is supported by a memorandum or affidavit, the memorandum or affidavit shall be served with the motion; and except as provided in [Rule 59\(c\)](#), opposing memoranda or affidavits must be served not later than one (1) business day before the hearing, unless the court permits them

to be served at some other time. Every motion shall be accompanied by a proposed order, which shall be served with the motion. The proposed order shall set forth in detailed itemized paragraphs the relief sought from the court. The proposed order should not be docketed or included in the permanent file if the order is not adopted by the court and may be destroyed after the hearing on the motion. The service and content of all motions, affidavits, and supporting papers shall be subject to the sanctions of **Rule 11** of these rules.

(d) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other papers upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period. Identical to the **Mass.R.Civ.P. 6(d)**

Rule 7: Pleadings Allowed: Form of Motions

(a) Pleadings. There shall be a complaint and (except as provided by law) an answer, and a trustee's answer under oath if trustee process is used; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer. In the Land Court, answers in actions for registration, confirmation, or tax foreclosure shall conform to **G.L. c. 185, § 41**, and **G.L. c. 60, § 68**, where applicable.

Identical to **Mass.R.Civ.P. 7(a)**

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules. Identical to **Mass.R.Civ.P. 7(b)**

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used. Identical to **Mass.R.Civ.P. 7(c)**

Rule 8: General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. Identical to **Mass.R.Civ.P. 8(a)**

(b) Defenses: Form of Denials. A party shall state in short and plain terms his defenses to such claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, he may do so by general denial subject to the obligations set forth in **Rule 11**. The signature to an instrument set forth in any pleading shall be taken as admitted unless a party specifically denies its genuineness. An allegation in any pleading that a place is a public way shall be taken as admitted unless a party specifically denies such allegation. Identical to **Mass.R.Civ.P. 8(b)**

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation. Identical to [Mass.R.Civ.P. 8\(c\)](#)

(d) Deleted.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds. All statements shall be made subject to the obligations set forth in [Rule 11](#). Identical to [Mass.R.Civ.P. 8\(e\)](#)

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice. Identical to [Mass.R.Civ.P. 8\(f\)](#)

Rule 9: Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. Identical to [Mass.R.Civ.P. 9\(a\)](#)

(b) Fraud, Mistake, Duress, Undue Influence, Condition of the Mind. In all averments of fraud, mistake, duress or undue influence, the circumstances constituting fraud, mistake, duress or undue influence shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally. Identical to [Mass.R.Civ.P. 9\(b\)](#)

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity. Identical to [Mass.R.Civ.P. 9\(c\)](#)

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law. Identical to [Mass.R.Civ.P. 9\(d\)](#)

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. Identical to [Mass.R.Civ.P. 9\(e\)](#)

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter. Identical to [Mass.R.Civ.P. 9\(f\)](#)

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated. Identical to [Mass.R.Civ.P. 9\(g\)](#)

Rule 10: Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the county, the title of the action, the docket number, and a designation as in [Rule 7\(a\)](#). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. Identical to [Mass.R.Civ.P. 10\(a\)](#)

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth. Identical to [Mass.R.Civ.P. 10\(b\)](#)

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes. Identical to [Mass.R.Civ.P. 10\(c\)](#)

(d) Parties' Residence or Place of Business. The complaint, and any subsequent pleading stating a claim against a person not originally a party to the action, shall state the respective residences or usual places of business of the party stating a claim and of each person against whom a claim is stated, if known to the pleader; if unknown, the complaint or pleading shall so state. Identical to [Mass.R.Civ.P. 10\(d\)](#)

(e) Two-Sided Documents. The text of any document may appear on both sides of the page. Identical to [Mass.R.Civ.P. 10\(e\)](#)

Amended March 5, 2010, effective May 1, 2010.

Reporter's Notes (2010). Rule 10(e) was added in 2010 to recognize the existing practice by which some attorneys include text on both the front and back of a page. The language of Rule 10(e) is similar to a 1999 amendment to Appellate Rule 20(a)(4) regarding briefs and other documents filed in the appellate courts.

Although the two-sided document language has been added to Rule 10, which governs the form of pleadings, the provisions of Rule 10, including the two-sided document language, are also applicable to motions and other papers filed under the Massachusetts Rules of Civil Procedure. See [Rule 7\(b\)\(2\)](#).

Rule 11: Appearances and Pleadings

(a) Signing. Every pleading of a party represented by an attorney shall be signed in his individual name by at least one attorney who is admitted to practice in this Commonwealth. The address of each attorney, telephone number, and e-mail address if any shall be stated. A party who is not represented by an attorney shall sign his pleadings and state his address, telephone number, and e-mail address if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is a good ground to support it; and that it is not interposed for delay. If a pleading is not signed, or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted. Identical to [Mass.R.Civ.P. 11\(a\)](#)

(b) Appearances.

(1) The filing of any pleading, motion, or other paper shall constitute an appearance by the attorney who signs it, unless the paper states otherwise.

(2) An appearance in a case may be made by filing a notice of appearance, containing the name, address, and telephone number of the attorney or person filing the notice.

(3) No appearance shall, of itself, constitute a general appearance. Identical to [Mass.R.Civ.P. 11\(b\)](#)

(c) Withdrawals. An attorney may, without leave of court, withdraw from a case by filing written notice of withdrawal, together with proof of service on his client and all other parties, provided that (1) such notice is accompanied by the appearance of successor counsel; (2) no motions are then pending before the court; and (3) no trial date has been set. Under all other circumstances, leave of court, on motion and notice, must be obtained. Identical to [Mass.R.Civ.P. 11\(c\)](#)

(d) Change of Appearance. In the event an attorney who has heretofore appeared, ceases to act, or a substitute attorney or additional attorney appears, or a party heretofore represented by attorney appears without attorney, or an attorney appears representing a heretofore unrepresented party, or a heretofore stated address or telephone number is changed, the party or attorney concerned shall notify the court and every other party (or his attorney, if the party is represented) in writing, and the clerk shall enter such cessation, appearance, or change on the docket forthwith. Until such notification the court, parties, and attorneys may rely on action by, and notice to, any attorney previously appearing (or party heretofore unrepresented), and on notice, at an address previously entered. Identical to [Mass.R.Civ.P. 11\(d\)](#)

(e) Verification Generally. When a pleading is required to be verified, or when an affidavit is required or permitted to be filed, the pleading may be verified or the affidavit made by the party, or by a person having knowledge of the facts for and on behalf of such party. Identical to [Mass.R.Civ.P. 11\(e\)](#)

Amended March 5, 2010, effective May 1, 2010.

Reporter's Notes (2010). Rule 11(a) has been amended to require attorneys and unrepresented parties to include their e-mail addresses, if any, on pleadings. The requirement of e-mail addresses already exists in the Federal Rules of Civil Procedure (Rule 11(a), as amended in 2007) and in the Rules of the Superior Court (Rule 9A(6)), effective March 2, 2009).

The Advisory Committee Notes to the 2007 amendment to the Federal Rules of Civil Procedure state that "[p]roviding an e-mail address is useful, but does not of itself signify consent to filing or service by e-mail." Likewise, the 2010 amendment to Rule 11(a) "does not of itself signify consent to filing or service by e-mail" in civil actions in Massachusetts.